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1 64. GMAC accepted over \$3,500.00 in relation to one
2 forbearance plan, but then rejected the forbearance agreement.

3 65. In two other instances, GMAC returned payments by the
4 plaintiff in the approximate amounts of \$3,000 and \$7,500.

5 66. On or about February 26, 2008, GMAC sent plaintiff
6 Notice of Trustee's Sale with the sale to take place on March 26,
7 2008. (See Notice of Trustee's Sale Dated February 26, 2008
8 attached hereto as "Exhibit K" and incorporated by reference.)
9

10 67. GMAC failed to properly calculate sums due by
11 plaintiff in relation to the foreclosure of the Trust Deed, by
12 failing to properly apply payments plaintiff made to FREMONT and
13 to GMAC.
14

15 68. Plaintiff is now informed, believes, and thereon
16 alleges, that KISHABA was not properly licensed in relation to
17 the loan transaction.
18

19 69. Plaintiff is now informed, believes, and thereon
20 alleges, that INTERNATIONAL, JAQUEZ, SAUERACKER, CHEN, knowingly
21 aided KISHABA in acting as an unlicensed mortgage broker.

22 FIRST CAUSE OF ACTION

23 NEGLIGENCE

24 (Against All Defendants)

25 70. Plaintiff repeats and realleges the allegations of
26 paragraphs 1 through 69, above, as though fully set forth herein
27 at length.
28

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1 71. Defendants had a duty to plaintiff to act in
2 accordance with accepted loan practices and procedures. GMAC had
3 a further duty to follow legal process for Notice of a Trustee's
4 Sale.

5
6 72. Defendants KISHABA, JAQUEZ, SAUERACKER, CHEN, AND
7 INTERNATIONAL further breached their duties to plaintiff in
8 failing to give plaintiff required disclosures and failing to
9 properly advise the plaintiff as to the terms and conditions of
10 the loan transaction.

11 73. Defendant's JAQUEZ, SAUERACKER, CHEN, AND
12 INTERNATIONAL had a duty to plaintiff to ensure that all persons
13 dealing with plaintiffs loan were properly licensed, which they
14 breached.

15
16 74. Defendants JAQUEZ, SAUERACKER, CHEN, AND
17 INTERNATIONAL breached its duty to plaintiff as his Escrow Agent
18 by accepting, depositing, and retaining over \$40,000 in funds
19 belonging to the plaintiff without written instructions signed by
20 the plaintiff.

21
22 75. Defendants JAQUEZ, SAUERACKER, CHEN, AND
23 INTERNATIONAL breached its duty to plaintiff as by failing and
24 refusing to account for funds, communicate with plaintiff, and
25 provide documents as requested.

26
27 76. As a direct and proximate result of defendants'
28 breach of duties, plaintiff has suffered damages in amounts

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1 exceeding the jurisdictional limits of this court and, which will
2 be proven at the time of trial.

3
4 **SECOND CAUSE OF ACTION**

5 **MISREPRESENTATION**

6 **(Against All Defendants)**

7
8 77. Plaintiff repeats and realleges the allegations of
9 paragraphs 1 through 76, above, as though fully set forth herein
10 at length.

11 78. Beginning in June 2006 KISHABA misrepresented the
12 terms and conditions on the plaintiff's loan, as more fully
13 alleged above. KISHABA further misrepresented his employment
14 status and ability to legally act as a mortgage broker with
15 INTERNATIONAL through CHEN'S license.

16
17 79. INTERNATIONAL, JAQUEZ, SAUERACKER, and KISHABA
18 further misrepresented on multiple occasions, the amount of cash
19 that plaintiff would receive from the refinance.

20 80. Plaintiff is informed believes and based thereon
21 alleges that when defendants made the representation as alleged
22 herein, defendants had no reasonable ground for believing them to
23 be true. Defendants made these representations with the intention
24 of inducing plaintiff to act in reliance on these representations
25 in the manner alleged, or with the exception that plaintiff would
26 so act.
27
28

1 81. Plaintiff, at the time these representations were
2 made by defendants and at the time the plaintiff took the actions
3 herein alleged, was ignorant of the falsity of defendants'
4 representations and believed them to be true.

5 82. In reliance on the above-alleged false
6 representations, plaintiff was induced to continue with the
7 refinance, forgo other refinance options, and incur substantial
8 penalties and fees on his existing mortgage.
9

10 83. Plaintiff would not have refinanced the SUBJECT
11 PROPERTY with defendants if not for the above-alleged false
12 representations by defendants.
13

14 84. Plaintiff's reliance on defendants' representations
15 were justified because defendants were mortgage, escrow, and real
16 estate professionals.

17 85. As a proximate result of defendants' negligence as
18 herein alleged, plaintiff has been damaged in an amount to be
19 determined at trial.
20

21 86. In doing the acts herein alleged above, defendants
22 acted with oppression, fraud and malice, and plaintiffs are
23 entitled to exemplary and punitive damages.

24 87. Plaintiff seeks compensation for costs of suit herein
25 incurred, including but not limited to attorney's fees.
26

27 **THIRD CAUSE OF ACTION**

28 **FRAUD - INTENTIONAL MISREPRESENTATION**

(Against All Defendants)

1 88. Plaintiff repeats and realleges the allegations of
2 paragraphs 1 through 87, above, as though fully set forth herein
3 at length.

4 89. Plaintiff is informed, believes, and thereon alleges
5 that KISHABA took documents from the three different document
6 signings to create one fraudulent loan documentation package.
7

8 90. Plaintiff is informed, believes, and thereon alleges
9 that KISHABA'S creation of one loan documentation package with
10 documents signed on three different occasions with different
11 terms amounts to forgery.

12 91. At the time defendants made the above alleged
13 statements, defendants, and each of them, knew that the
14 representations and documents were false.
15

16 92. Defendants have unlawfully used the falsified
17 documents and fraudulent conduct in attempting to conduct a
18 trustee's sale and obtain a non-judicial foreclosure and unlawful
19 detainer action.
20

21 93. As a direct and proximate result of the reliance upon
22 the truth of defendants' representations, Plaintiff has suffered
23 damages in an amount unknown at this time but within the
24 jurisdiction of this court. In addition to the funds already
25 paid, plaintiff will be required to expend substantial additional
26 funds to set aside the events derivative of defendants' conduct.
27 Plaintiff does not know the full extent of such expenditures and
28 other consequential damages at the present time, but will seek

1 leave of court to amend this pleading when that amount has been
2 ascertained.

3 94. Defendants' conduct in making these intentional
4 misrepresentations was done with oppression, fraud or malice, in
5 that defendants willfully, consciously and despicably disregarded
6 Plaintiffs' rights. Plaintiff is therefore entitled to punitive
7 damages in an amount to be determined at trial.
8

9 FOURTH CAUSE OF ACTION

10 CONSPIRACY TO COMMIT FRAUD

11 (Against All Defendants)

12 95. Plaintiff repeats and realleges the allegations of
13 paragraphs 1 through 94, above, as though fully set forth herein
14 at length.
15

16 96. Defendants, and each of them, conspired together to
17 orchestrate a scheme to forge loan documents and misrepresent the
18 terms of the plaintiff's loan transaction.
19

20 97. Defendants further conspired together to steal funds
21 from the plaintiff's refinance loan transaction.

22 98. As a proximate result of the wrongful conspiratory
23 acts of the Defendants, plaintiffs have been damaged in amounts
24 to be proven at trial.

25 99. Defendants' conduct was done with oppression, fraud
26 or malice, in that defendants willfully, conscientiously and
27 despicably disregarded plaintiff's rights. Plaintiff is therefore
28

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1 entitled to punitive damages in an amount to be determined at
2 trial.

3 **FIFTH CAUSE OF ACTION**

4 **CANCELLATION OF WRITTEN INSTRUMENT**

5 **(Against All Defendants)**

6
7 100. Plaintiff repeats and realleges the allegations of
8 paragraphs 1 through 99, above, as though fully set forth herein
9 at length.

10 101. There is an existence a certain written instrument
11 dated December 20, 2006, which is the disputed trust deed
12 (Exhibit "G") between plaintiff and defendant FREMONT.

13
14 102. The Trust Deed (Exhibit "G") was procured through
15 defendants' fraud, misrepresentations, and fraudulent compilation
16 of documents, as described hereinabove. If the disputed trust
17 deed is left outstanding, Plaintiff will be subjected to serious
18 and substantial injury in that the fraudulently procured document
19 eliminating all of plaintiff's interest in the subject property.

20
21 103. The fraudulent conduct of defendants herein was
22 oppressive and despicable and subjected Plaintiff to cruel and
23 unjust hardships in conscious disregard of Plaintiff's rights,
24 and therefore Plaintiff seeks exemplary and punitive damages.

25 **SIXTH CAUSE OF ACTION**

26 **TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT**

27 **INJUNCTIONS**

28 **(Against Defendant GMAC and DOES 1-25)**

1 104. Plaintiff repeats and realleges the allegations of
2 paragraphs 1 through 103, above, as though fully set forth herein
3 at length.

4 105. As more particularly described herein, beginning on
5 or about June 22, 2007, and continuing to the present time,
6 defendants, and each of them, wrongfully and unlawfully are
7 threatening plaintiff with the loss of his residence.
8

9 106. Defendants' threatened wrongful conduct, unless and
10 until enjoined and restrained by order of this court, will cause
11 great and irreparable injury to Plaintiff in that he will lose
12 his home, where they have sustained equity in excess of \$100,000.
13

14 107. Plaintiff has no adequate legal remedy at law for the
15 injuries that are being threatened, as shown by the facts set
16 forth herein, and further, it will be impossible for Plaintiff to
17 determine the precise amount of damages that he will suffer if he
18 loses his home because of defendants' actions.
19

20 108. As a proximate result of defendants' wrongful
21 conduct, Plaintiff has been damaged in an amount unknown at this
22 time, and will continue to be damaged so long as defendants'
23 conduct continues. The full amount of this damage is not now
24 known to plaintiff, and plaintiff will amend this complaint to
25 state the amount of damage when same becomes known to it or upon
26 proof of damages.
27

28 109. Plaintiff seeks a court order restraining defendants,
and each of them, from conducting a non-judicial foreclosure of

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1 the SUBJECT PROPERTY during the pendency of this action or until
2 plaintiff's rights in the SUBJECT PROPERTY have been determined
3 by this court.

4 SEVENTH CAUSE OF ACTION

5 BREACH OF FIDUCIARY DUTY

6 (Against All Defendants)

7
8 110. Plaintiff repeats and realleges the allegations of
9 paragraphs 1 through 109, above, as though fully set forth herein
10 at length.

11 111. As his Escrow agent, JAQUEZ and INTERNATIONAL, owed
12 plaintiff a fiduciary duty.

13 112. As his Mortgage Broker, CHEN, KISHABA, SAUERACKER,
14 and INTERNATIONAL owed plaintiff a fiduciary duty.

15 113. As his lenders and loan servicers, FREMONT and GNAC
16 owed plaintiff a fiduciary duty.

17 114. Defendants breached their fiduciary duties to
18 plaintiff through their negligent and fraudulent actions as more
19 fully alleged above.

20 115. The fraudulent conduct of defendants herein was
21 oppressive and despicable and subjected Plaintiff to cruel and
22 unjust hardships in conscious disregard of Plaintiff's rights,
23 and therefore Plaintiff seeks exemplary and punitive damages.

24 EIGHTH CAUSE OF ACTION

25 QUIET TITLE

26 (Against Defendants FREMONT, GNAC, and DOES 1-25)

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1 116. Plaintiff repeats and realleges the allegations of
2 paragraphs 1 through 115, above, as though fully set forth herein
3 at length.

4 117. Plaintiff's title is based on the facts plead
5 hereinabove, and incorporated by reference.
6

7 118. Plaintiff is seeking to quiet title against all
8 adverse claims of defendants (the adverse claims) to wit:

9 a. The claims of the fictitiously named defendants
10 described in paragraphs 13;

11 b. The claims of the unknown defendants described in
12 paragraph 15, whether or not any such claim is known to
13 plaintiff;
14

15 c. The unknown, uncertain or contingent claims, if any,
16 of any defendant;

17 d. The claim of defendants, FREMONT and GMAC described
18 hereinabove, the adverse claims are without any right whatever.
19 Defendants have no right, title, estate, lien or interests
20 whatever in the property adverse to plaintiff's title.
21

22 e. Plaintiff seeks to quiet title as of November 1,
23 2004.

24 NINTH CAUSE OF ACTION

25 BREACH OF CONTRACT

26 (Against Defendants INTERNATIONAL, FREMONT, GMAC, and DOES 1-25)
27
28

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1 119. Plaintiff repeats and realleges the allegations of
2 paragraphs 1 through 118, above, as though fully set forth herein
3 at length.

4 120. Plaintiff and FREMONT entered into written contracts,
5 namely the a promissory Note and Deed of Trust, regarding
6 refinancing the SUBJECT PROPERTY. (See Exhibit G.)

7 121. As part of the eventual contract, FREMONT was to loan
8 to plaintiff the sum of \$773,500 with at least \$65,605.36 in cash
9 directly to the plaintiff.
10

11 122. FREMONT delivered only \$25,128.44 to the plaintiff
12 and breached the contract by failing to deliver over \$40,476.92
13 in funds to the plaintiff.
14

15 123. FREMONT further breached the contract by attempting
16 to collect payments on the \$40,476.92 that was never delivered to
17 the plaintiff.
18

19 124. As FREMONT'S successor in interest, GMAC stands in
20 FREMONT'S shoes and is responsible for all past misdeeds of
21 FREMONT.

22 125. GMAC through the purchase of the Note and Deed
23 secured by the SUBJECT PROPERTY also are parties to those
24 contracts with plaintiff.

25 126. GMAC breached those written contracts by failing to
26 properly account for funds due to plaintiff, attempting to
27 collect on debts secured by fraud, failing to properly post
28

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1 payments by plaintiff to both FREMONT and GMAC, and by wrongfully
2 foreclosing on the Trust Deed.

3 127. INTERNATIONAL also had mortgage broker and a written
4 escrow contract with plaintiff.

5 128. INTERNATIONAL breached the mortgage broker contract
6 through misrepresentations, bait and switch, and failing to
7 complete the refinance on the promised terms.

8 129. For example, INTERNATIONAL through its agent KISHABA
9 initially promised to charge only one half broker point, which
10 would have culminated in a broker fee of \$3,867.50. INTERNATIONAL
11 ended up charging over 3.128 points culminating in a \$24,195.08
12 broker fee. On top of that, INTERNATIONAL ended up getting a
13 substantial Yield Spread Premium, which it failed to properly
14 disclose to plaintiff.

15 130. INTERNATIONAL actually ended up collecting more money
16 on plaintiff's refinance transaction than did the plaintiff.

17 131. Plaintiff has performed all conditions, covenants and
18 promises required on his part to be performed in accordance with
19 the terms and conditions of the contract or his performance is
20 excused by the material breaches of defendants.

21 132. On or about March 2007 and thereafter, Plaintiff
22 discovered that defendants were not performing their obligations
23 pursuant to the written contracts.

24 133. Plaintiff has requested that defendants perform their
25 obligations under the contract.

1 134. Plaintiff has suffered damages in an amount to be
2 proven at trial.

3 135. Plaintiff seeks compensation for costs of suit herein
4 incurred, including but not limited to attorneys fees.
5

6 TENTH CAUSE OF ACTION

7 VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200

8 (Against Defendants INTERNATIONAL, FREMONT, GNAC, and DOES 1-25)

9 136. Plaintiff repeats and realleges the allegations of
10 paragraphs 1 through 135, above, as though fully set forth herein
11 at length.

12 137. Defendants, and each of them, have committed acts of
13 unfair business practices, as defined by *California Business &*
14 *Professions Code §17200 et seq.*, by engaging in acts which
15 include but are not limited to, making loans based on made up
16 information which defendants, and each of them, falsified; using
17 bait and switch tactics; making loans without confirming or
18 verifying borrower information; making loans without providing
19 the borrower with sufficient, accurate and understandable
20 information regarding the terms and conditions of the loan;
21 making loans without providing the borrower with sufficient,
22 accurate and understandable information regarding the nature and
23 extent of the financial risk being assumed by the borrower; and
24 making loans without regard to the financial ability of the
25 borrower to pay.
26
27
28

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1 138. These acts all as alleged above violate California
2 *Business & Professions Code* §17200 et seq., in the manner alleged
3 above and, based on information and belief in the following
4 further respects:

5
6 a. Engaging in predatory lending practices in dealings
7 with plaintiff, including but not limited to, the use of high
8 pressure sales tactics and the falsification of plaintiff's loan
9 application information;

10 b. Failing to provide notices and disclosures required
11 by TILA;

12
13 c. Engaging in falsifying loan documents; and

14 d. Other acts that plaintiffs are presently unaware of.

15 139. As a direct and proximate result of the
16 aforementioned acts, defendants, and each of them, obtained
17 unwarranted fees from plaintiff for brokering and servicing the
18 loan. Predictably, plaintiff is now unable to refinance his loan
19 to get out of the defendants' program and will incur even more
20 damages to his equity and credit. Plaintiff has suffered injury
21 as alleged herein.

22
23 140. Plaintiff individually and on behalf of the public,
24 seeks an order of this court enjoining defendants and prohibiting
25 each of the said defendants from predatory loan practices of the
26 nature and kind herein alleged, as the public and plaintiff will
27 be irreparably harmed if such order is not granted.
28

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1 141. Defendants have been unjustly enriched at the expense
2 of the plaintiff, who therefore is entitled to equitable
3 restitution and disgorgement of profits realized by defendants as
4 result of the unfair, unlawful, deceptive, untrue and/or
5 misleading practices engaged in as describe above by defendants.
6

7 142. Moreover, because plaintiff brings this action on
8 behalf of himself and on behalf of the general public he is
9 entitled to reasonable attorneys fees pursuant to *California Code*
10 *of Civil Procedure* §1021.5. Plaintiff has sustained damages,
11 including attorney's fees and legal costs, and will sustain
12 additional damages in prosecuting this action.
13

14 ELEVENTH CAUSE OF ACTION

15 BREACH OF GOOD FAITH AND FAIR DEALING

16 (Against All Defendants)

17 143. Plaintiff repeats and realleges the allegations of
18 paragraphs 1 through 142, above, as though fully set forth herein
19 at length.
20

21 144. The refinance loan, including the promissory note and
22 deed of trust, imposed upon defendants a covenant of good faith
23 and fair dealing in performing the terms and conditions of the
24 loan agreement and carrying out its purpose and intent.
25

26 145. The procurement of the loan by defendants also
27 imposed upon defendants a covenant of good faith and fair dealing
28 in performing the terms and conditions of the procurement.